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In re Application of :
WATANABE, Masayoshi, et al. :
U.S. Application No.: 10/571,054 :
PCT No.: PCT/JP2004/013253 : DECISION
International Filing Date: 06 September 2004 :
Priority Date: 08 September 2003 :
Attorney's Docket No.: Q93262 :
For: ELECTROLYTE COMPOSITION AND :
PHOTOELECTRIC CONVERTER USING :
SAME :
:

This is a decision on applicant's "Petition Under 37 CFR 1.182" filed on 24 March 2006, which requests conversion of the present national stage application filed under 35 U.S.C. 371 to a continuation application filed under 35 U.S.C. 111(a). Applicants have paid the required petition fee.

BACKGROUND

On 06 September 2004, applicants filed international application PCT/JP2004/013253. The application claimed a priority date of 08 September 2003, and it designated the United States. On 17 March 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for payment of the basic national fee thirty months from the priority date, i.e. 08 March 2006.

On 07 March 2006, applicants filed a transmittal letter requesting entry into "the National stage under 35 U.S.C. 371" for PCT/JP2004/013253. The transmittal letter was accompanied by, among other materials, payment of the basic national fee, an executed declaration, and a purported translation of the international application into English.

On 24 March 2006, applicants filed the present petition requesting that the present application be converted to a continuation application filed under 35 U.S.C. 111(a).

DISCUSSION**1. Petition To Convert:**

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.494(f):

The documents and fees submitted ... must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

In addition, section 1893.03(a) of the MPEP states that:

If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

As noted above, applicants' original transmittal letter, filed 07 March 2006, specifically identified the accompanying submission as a national stage filing under 35 U.S.C. 371. No contradictory instructions were submitted at the time of filing. Accordingly, upon filing the present application (10/571,054) was properly treated as the a national stage application of international application PCT/JP2004/013253, filed under 35 U.S.C. 371.

In the present petition, applicants request that the application be converted to a continuation application filed under 35 U.S.C. 111(a). However, U.S. Statutes and Regulations do not make specific provision for the requested action and, as such, the Office does not grant such petitions for conversion as a mere matter of course. The Office will only grant such petitions upon a showing by applicants of sufficient cause (e.g., loss of patent rights) where no other remedy is available.

In the present petition, applicants have not provided any showing of sufficient cause which would justify the conversion of the present application, which has been properly processed as a national stage application filed under 35 USC 371, to a continuation application filed under 35 USC 111(a).

Therefore, in view of the facts that the originally filed application papers were properly processed as a filing under 35 USC 371 and that applicants have failed to demonstrate sufficient cause which would justify a conversion of the application, the petition may not be properly granted.

2. English Translation Of International Application:

37 CFR 1.495(c)(1)(i) requires applicants to submit a "translation of the international application, as filed, into the English language." The purported English translation of the international application filed by applicants on 07 March 2006 includes 23 claims; however, the published international application includes only six claims. It therefore appears that applicants have not submitted an English translation of the claims as filed, as required.

CONCLUSION

For the reasons above, the petition to convert the application from a national stage application filed under 35 U.S.C. 371 to a continuation application filed under 35 U.S.C. 111(a) is **DISMISSED** without prejudice.

The present national stage application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of a proper translation into English of the international application (specifically, the original claims filed therein) and the processing fee for filing this translation later than thirty months after the priority date.



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